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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,013	07/25/2003	Daniel Dietzel	3401-138	3993
7590 10/09/2007 Thomas C. Pontani, Esq. Cohen, Pontani, Lieberman & Pavane Suite 1210 551 Fifth Avenue New York, NY 10176			EXAMINER ARAJ, MICHAEL J	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/628,013

Applicant(s)

DIETZEL ET AL.

Examiner

Michael J. Araj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,17-21,25-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,17-21,25-28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2007 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12, 17-21, 25-28 and 30 are rejected, as understood, under 35 U.S.C. 102(e) as being anticipated by Abdelgany et al. (U.S. Publication No. 2002/0082604).

Abdelgany et al. disclose a device that includes a first mounting part, having first side with first and second opposing ends, defining a receiving channel extending along an entire length of said first mounting part and that has a longitudinal axis along the

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length between said first and second ends of said first side (see Figure 1 below). The mounting part further defines at least one slot (See Fig. 7C) therethrough at an angle oblique to the longitudinal axis of the receiving channel. The first mounting part defines two intersecting slots in the region of the receiving channel each having an acute but different angles relative to the longitudinal axis of the receiving channel, where the second mounting part receivable on the first mounting part has at least one slot arranged. It can also be seen that the first and second slots fall within the range of being between 4 and 13 degrees. The second mounting part also defines a receiving channel where the first and second mounting parts face each other when second mounting part is received on first mounting part (see Figure 1 below) and are receivable on each other. There are also grooves in the receiving channel can also be seen as being V-shaped which also gives rise to that surface being roughened. Abdelgany et al. also discloses that each first and second mounting parts include guide elements positioning the parts relative to each other such that the slots and receiving channels face each other and are arranged congruently. These guide elements can be considered normal to the longitudinal axis of the receiving channel if the longitudinal axis of the receiving channel is defined as perpendicular to the entire length of the device. Also in looking at the slots in Fig. 7C it can be seen that these slots are configured so that an extent of each of said first and second slots in a direction of the longitudinal axis of the channel is greater than an extend of the each of the first and second slots in a direction transverse to the longitudinal axis of the channel. With regard the statement of intended use and other functional statements, they do not

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impose any structural limitations on the claims distinguishable over Abdelgany et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

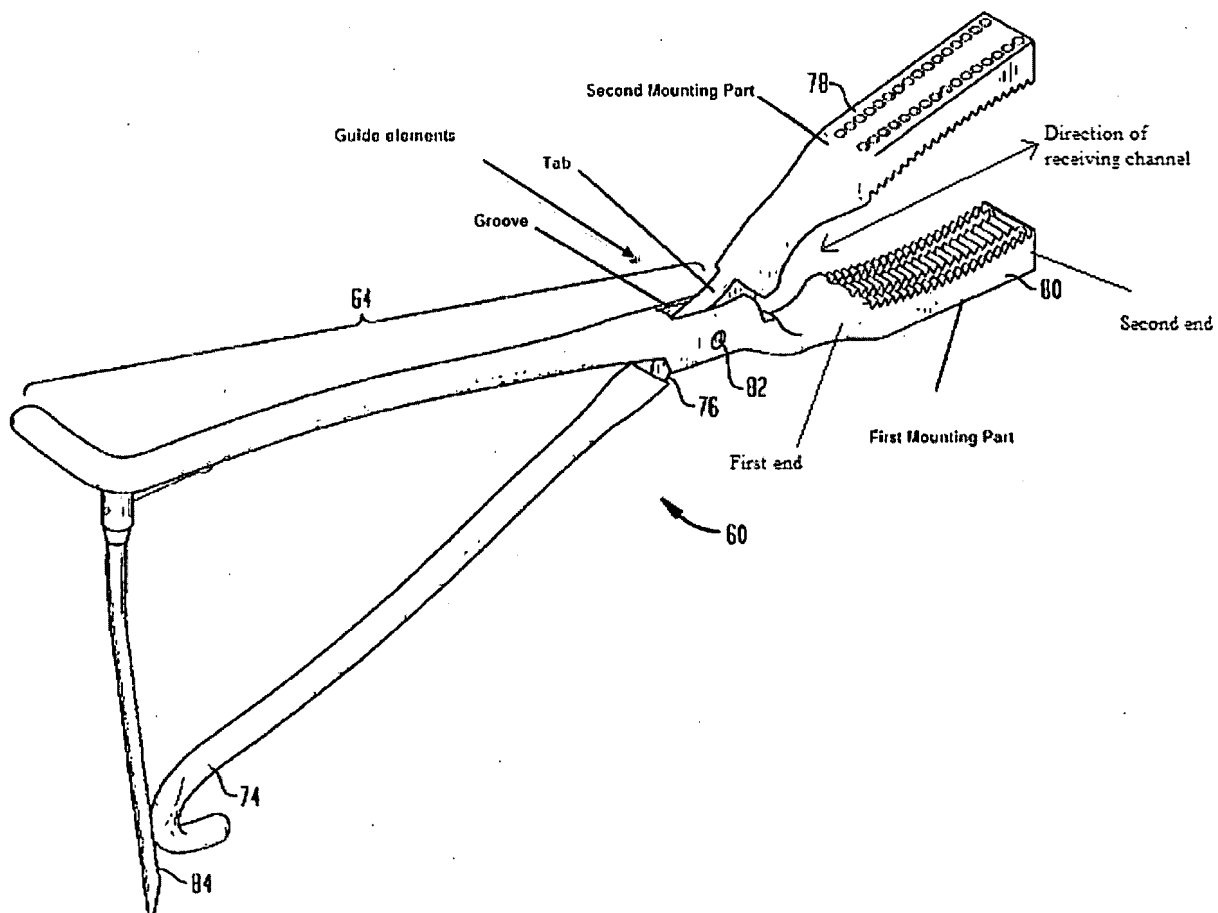


Figure 1

Response to Arguments

Applicant's arguments filed on July 30, 2007 have been fully considered but they are not fully persuasive. The Hilburn rejection under 35 U.S.C. 102 (b) has been withdrawn due to the submitted amendments. However, the Abdelgany et al. rejection under 35 U.S.C. 102 (e) stands. Applicant argues that Abdelgany shows a device in which the slots would be arranged in a transverse direction to the receiving channel when the cutting guide is mounted to the main body to provide a cutting guide-receiving structure. The direction of the receiving channel has been specifically defined in Figure 1 above to clarify the interpretation. Under this definition, it can be seen that the first and second slots are configured so that the extend of each of the first and second slots in a direction of the longitudinal axis of the channel is greater than an extend of the each of the first and second slots in a direction transverse to the longitudinal axis of the channel. The slots seen in Figure 1 above can be replaced with the mounting plate seen in Figure 3C of Abdelgany et al.

Conclusion

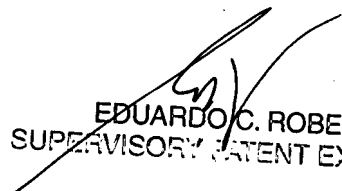
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MJA


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER